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| APPLICATION NO.                 | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.     | CONFIRMATION NO. |
|---------------------------------|-------------|----------------------|-------------------------|------------------|
| 09/904,815                      | 07/13/2001  | Robert S. Blackmore  | POU920000147US1         | 4435             |
| 7590                            | 10/01/2004  |                      | EXAMINER                |                  |
| LAWRENCE D. CUTTER              |             |                      | LE, HIEU C              |                  |
| IBM Corporation                 |             |                      | ART UNIT                | PAPER NUMBER     |
| Intellectual Property Law Dept. |             |                      |                         |                  |
| 2455 South Rd., M/S P386        |             |                      | 2142                    |                  |
| Poughkeepsie, NY 12601          |             |                      | DATE MAILED: 10/01/2004 |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                 |                  |  |
|------------------------------|-----------------|------------------|--|
| <b>Office Action Summary</b> | Application No. | Applicant(s)     |  |
|                              | 09/904,815      | BLACKMORE ET AL. |  |
|                              | Examiner        | Art Unit         |  |
|                              | Hieu c. Le      | 2142             |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is **FINAL**.                                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-9 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 7-13-04 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_.

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites "sending a plurality of messages from a process running on one of the nodes," on line 3 and "said sending process" and on line 5. It is not clear whether "sender" equals to "process running". Also, recites "to an equal plurality of other nodes" line 4. It is not clear equal to what?

***9Claim Rejections - 35 USC § 101***

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claim 9 is rejected under 35 U.S.C. 101 because the claims are drawn to a signal per se not tangibly embodied on a computer readable medium.

*Claim 9 is non statutory because "A machine-readable medium containing program" alone has set no definition. A statutory product with descriptive material must include a positive recitation of the computer readable medium MPEP 2106, case law, USPTO policy. Claim 9 should recite "A computer-readable medium having stored thereon a program".*

***Claim Objections***

6. Claim 9 is objected to because of the following informalities: "message" in line 4 should be delete . Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-2,4-5, 7-8,9 are rejected under 35 U.S.C. 102(b) as anticipated by Champage et al (US Patent 4,750,165).

As to claim 1, Champage discloses a method for message processing in a distributed data processing system having a plurality of nodes (col. 6, line 30, col. 11, lines 32-37), said method comprising the steps of:

    sending a plurality of messages from a process running on one of the nodes in the system to an equal plurality of other nodes in the system (col. 6, lines 61-68);

    setting the status of said sending process to idle (col. 9, lines 46-53); and

    changing the status of said sending process to "active" upon receipt of responses to said messages from all of said other nodes or upon receipt of notification that at least one response will not arrive [ Fig. 6, shows the node at IDLE state, receives NACK (negative acknowledgement it goes to SEND (active))].

As to claim 2, Champage further discloses further including the step of processing, by said sending process, said responses to said messages (Fig. 5, items 52).

As to claim 4, Champage further discloses the messages sent to the plurality of nodes are all the same (Fig. 2).

As to claim 5, refer to claim 1 rejection. Champage further discloses a plurality of nodes connected by a network for sending messages between the nodes (col. 11; lines 32-36);

a plurality of message processing programs each being stored in one of said nodes (Fig. 5);

a message sending process program residing in one of said nodes and being capable of entering an inactive state (col. 9, lines 16-51),

a message processing interface program, residing on said one node and being capable of (1) sending a plurality of messages in response to requests from said sending process program (Fig. 5),

As to claim 7, refer to claim 2 rejection.

As to claim 8, refer to claim 4 rejection.

As to claim 9, refer to claim 1 rejection. Champage further discloses computer Program (Fig. 5).

#### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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10. Claims 3& 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Champage et al (US Patent 4,750,165) and applied to claim 1& 5 above in view of Mendel (US. Patent. 6,192,443).

As to claim 3, Champel does not disclose prior to sending the message, the sending process selects a subset of nodes within said data processing system for receipt of the message.

Mendel discloses a distributed system for sending messages between plurality of nodes (col. 6, lines 52-67). A subset of a set of nodes is selected (Figs. 2&3).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use Mendel's teachings to modify the method of Champage by selecting a subset of a set of nodes in order to switch access to secondary node if the primary node unavailable for any reason.

As to claim 6, refer to claim 3 rejection.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hieu Le whose telephone number is (703) 306-3101. The examiner can normally be reached on Monday to Friday from 7:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Harvey, can be reached on (703) 305-9705. The fax phone number for this Group is (703) 308-9051.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3900.



JACK B. HARVEY  
SUPERVISORY PATENT EXAMINER